IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

Crl.MC.No. 1636 of 2007()

(C.C. No. 817/2006 of JUDICIAL FIRST CLASS MAGISTRATE COURT II, CHERTHALA)

PETITIONER:

1. P.M.HUMSA, AGED 50 YEARS,
   S/O.MOHAMMAD HAJI, PANDARAKATTIL VEETTIL,
   PANCHAYAT WARD NO.9, AROOR PANCHAYATH,
   CHERTHALA TALUK, ALAPPUZHA DISTRICT.

2. P.V.VIJU, AGED 31 YEARS,
   S/O.R.VIKRAMAN, REPRESENTING HAM INDUSTRIESW ICE
   PLANT(NOW KNOWN AS DEVI ICE PANT), PROPRIETOR
   DEVI ICE PLANT, CHANDIDOOR, CHERTHALA TALUK,
   ALAPPUZHA DISTRICT.

BY ADV. SRI.ALIAS M.CHERIAN

RESPONDENTS:

1. KERALA STATE ELECTRICITY BOARD,
   REPRESENTED BY ITS CHAIRMAN, THIRUVANANTHAPURAM.

2. SENIOR SUPERINTENDENT,
   ELECTRICAL MAJOR SECTION, AROOR,
   CHERTHALA, ALAPPUZHA DISTRICT.

3. ASSISTANT ENGINEER,
   ANTI POWER THEFT SQUAD, KOZHIKODE.

4. STATE OF KERALA, REPRESENTED BY THE
   PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

5. AHAMMADKUTTY, AGED 58 YEARS,
   S/O.KUNJU THAINA, PEDIYEKAL HOUSE,
   AROOR PANCHAYATH 10 WARD, CHERTHALA, TALUK,
   ALAPPUZHA DISTRICT.

BY ADV. SRI. GIKKU JACOB, PUBLIC PROSECUTOR

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 07/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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Crl.M.C. No.1636 Of 2007

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Dated this the 7th day of August, 2007

ORDER

The petitioner faces indictment in a prosecution under the provisions of the Indian Electricity Act. Cognizance has been taken on the basis of the final report submitted by the Police after investigation. The final report is produced as Annexure A12 .

2. The learned counsel for the petitioner prays, the learned Public Prosecutor does not oppose the said prayer and I am satisfied that in the light of the decision in Parmasivam V.Union of India [2007 (2) KLT 733] cognizance taken on the basis of the final report submitted by the Police is incompetent and deserves to be set aside. The report of the learned Magistrate also shows that cognizance has been taken without complying with the directions in the said decision, cognizance having been taken prior to the said decision.

3. This petition is allowed. C.C.No.817/2006 before the Judicial First Class Magistrate Court -II, Cherthala is hereby quashed. Needless to say, the quashing of the proceedings, consequent to in incompetent cognizance, shall not in any way fetter the rights of the Authorised Officer to lodge an appropriate complaint in accordance with law.

(R.BASANT, JUDGE)

sj